IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.750 OF 2004
IN
ARBITRATION PETITION NO.311 OF 2004

Mr.Shamin Desai .. Appellant

v/s.

Mr.Neel B. Dalal & anr. .. Respondents

Mr.Robin Jaisinghani i/by M/s.Basant Tilokani & Co.
for appellant.

Mr.R.M. Jaykar i/by M/s.Khaitan & Jayakar for
respondents.

**CORAM : R.M.LODHA AND**
**J.P.DEVADHAR, JJ.**

**DATED : 14th December, 2004**

**P.C.**

Heard Mr.Robin Jaisinghani, the learned counsel for the appellant.

2. Having considered the material on record and the award passed by the Arbitral Tribunal and the Appellate Tribunal, we are satisfied that the award cannot be said to be based on no evidence. The Arbitral Tribunal in the award observed thus-

> "The Respondent started business with the Applicant on 16.06.2000 and a cheque of Rs.15,00,000/- was given by the Respondent to the Applicant. Another cheque of Rs.10,00,000/- was also given by the Applicant on 20.09.200. All the contract notes and the bills were sent by the Applicant to the Respondent at his home address of Worli, Mumbai - 400 025. On 16.06.2001, the Applicant's representative

visited the office of the Respondent and handed over the ledger account to the Respondent and tallied that account with that in the books of the Respondent and the ledger account was accepted by Mr.Anurag Khanna, the representative of the Respondent. On record there is an acknowledgement of letter dated 19.03.2001 sent by the Applicant to the Respondent and it is acknowledgment by Mr.Anurag Khanna, who incidentally attended the hearing in this matter held on 28.03.2002.

It appears from the records of the case and representations of the Applicant that the Applicant has fulfilled his part of the obligation namely executed the contracts on the floor of the exchange issued bills from time to time to the respondent, sent a copy of ledger account to the respondent and obtained his acknowledgement. The Applicant made all efforts to recover the amount due from the respondent, but the respondent has never given any explanation at any time for any dispute with any documentary evidence nor availed several opportunities extended to him by this Arbitral Forum."

3. The Appellate Tribunal affirmed the award.

4. The learned Single Judge found that the contention that the award was not founded on legal evidence, was not correct. We concur with the view of the learned Single Judge. The learned Single Judge in the impugned order observed thus-

"4. The Arbitrators have specifically recorded that the contract notes and the bills were produced before the Petitioner for inspection. Apart from the fact that this is finding of fact, it is pertinent to note that by a letter dated 19th March, 2001, Respondent No.1 had specifically stated that the contract notes had been forwarded to the Petitioner. There was no reply to this letter. The finding of the learned Arbitrator cannot therefore be

said to be unfounded. The defence on this basis that the T.R.D. records did not refer specifically to any transaction in the Petitioner's name is also without substance.

5. In respect of this allegation, the Arbitral Tribunal issued direction on 24th February, 2004 calling upon Respondent No.1 to file an affidavit explaining the same. Respondent No.1 did so by its affidavit dated 27th February, 2004. The explanation given by Respondent No.1 was considered and accepted by the learned Arbitrators. The learned Arbitrators accepted the contention that it was a regular practice that when various scrips are brought in bulk on a particular day they would be recorded in the BOLT/sauda sheets which showed the list of trades which are executed on a particular day by the broker and hence the said sheet has the broker ID on the left hand top corner. At the end of the day it was recorded in each claimants account with the settlement number and the details of the scrips. This was to ensure fairness to various clients on whose behalf the scrips are purchased on the same day. In other words this would ensure that, no single client is foisted with a higher price. The mandatory requirements to the contrary came into effect only on 1st August, 2001."

5. No legal infirmity is found in the order of the learned Single Judge. The appeal has no merit and is dismissed.

**(R.M.LODHA, J.)**

**(J.P. DEVADHAR, J.)**